

TEMPORARY CROSS REFERENCES TO CITATIONS

GENERAL COMMENTS

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the proposed adoption of)
NEW RULE I pertaining to the)
application of Best Available Retrofit)
Technology to existing sources affecting)
visibility in mandatory Class I federal)
areas.)

NOTICE OF PUBLIC HEARING ON
PROPOSED ADOPTION OF NEW
RULE

(AIR QUALITY)

TO: All Interested Persons

1. On _____ at ____:00 __.m. the Board of Environmental Review (Board) will hold a public hearing in Room ____ of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated proposed new rule.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., _____, 200_, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386 or email "ber@mt.gov".

3. The proposed new rule provides as follows:

NEW RULE 1 DEFINITIONS

(1) For purposes of this rule, the following definitions apply: [40 CFR 301]

(a) “Best available retrofit technology, or BART” means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the following:

- (i) the technology available;
- (ii) the costs of compliance;
- (iii) the energy and non-air quality environmental impacts of compliance;
- (iv) any pollution control equipment in use or in existence at the source;
- (v) the remaining useful life of the source; and
- (vi) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(b) "BART-eligible source" means an existing stationary facility which emits visibility-impairing pollutants in amounts the department anticipates will cause or contribute to any visibility impairment in any mandatory class I federal area.

(c) "Building, structure, or facility" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities must be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0 respectively). [Necessary for definition of "existing stationary facility"]

(d) "Deciview" means a measurement of visibility impairment. A deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on the following equation (for the purposes of calculating deciview, the atmospheric light extinction coefficient must be calculated from aerosol measurements):

$$\text{Deciview haze index} = 10 \ln (b_{\text{ext}}/10 \text{ Mm}^{-1}).$$

Where b_{ext} = the atmospheric light extinction coefficient, expressed in inverse megameters (Mm^{-1}).

(e) [Used in the definition of "BART-eligible source" at 40 CFR 301.] "Existing stationary facility" means any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted.

(i) fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input;

(ii) coal cleaning plants (thermal dryers);

(iii) kraft pulp mills;

(iv) Portland cement plants;

(v) primary zinc smelters;

(vi) iron and steel mill plants;

(vii) primary aluminum ore reduction plants;

(viii) primary copper smelters;

(ix) municipal incinerators capable of charging more than 250 tons of refuse per day;

(x) hydrofluoric, sulfuric, and nitric acid plants;

(xi) petroleum refineries;

(xii) lime plants;

(xiii) phosphate rock processing plants;

(xiv) coke oven batteries;

(xv) sulfur recovery plants;

(xvi) carbon black plants (furnace process);

- (xvii) primary lead smelters;
 - (xviii) fuel conversion plants;
 - (xix) sintering plants;
 - (xx) secondary metal production facilities;
 - (xxi) chemical process plants;
 - (xxii) fossil-fuel boilers of more than 250 million British thermal units per hour heat input;
 - (xxiii) petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels;
 - (xxiv) taconite ore processing facilities;
 - (xxv) glass fiber processing plants; and
 - (xxvi) charcoal production facilities.
- (f) "Mandatory class I federal area" means any area identified in 40 CFR 81.417.
- (g) "Fixed capital costs" means the capital needed to provide all of the depreciable components.
- (h) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- (i) "In existence" means that the owner or operator has obtained all necessary preconstruction approvals or permits required by federal, state, or local air pollution emissions and air quality laws or regulations and either has:
- (i) begun, or caused to begin, a continuous program of physical on-site construction of the facility; or
 - (ii) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed in a reasonable time. [Necessary for definition of "existing stationary facility"]
- (j) "In operation" means engaged in activity related to the primary design function of the source. [Necessary for definition of "existing stationary facility"]
- (k) "Installation" means an identifiable piece of process equipment.
- (l) "Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.
- (m) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.
- (n) "Reconstruction" will be presumed to have taken place where the fixed capital cost of the new component exceeds 50 percent of the fixed capital cost of a comparable entirely new source. Any final decision as to whether reconstruction has occurred shall be made in accordance with 40 CFR §60.15. [Necessary for definition of "existing stationary facility"]

(o) “Secondary emissions” means emissions which occur as a result of the construction or operation of an existing stationary facility but do not come from the existing stationary facility. Secondary emission may include, but are not limited to, emission from ships or trains coming to or from the existing stationary facility. [Necessary for definition of “potential to emit.”]

(ep) “Stationary source” means any building, structure, facility, or installation which emits or may emit any air pollutant [17.8.901 adds “subject to regulation under the FCAA.”] [Necessary for definition of “existing stationary facility.”]

(eq) “Visibility impairment” means any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions.

NEW RULE II INCORPORATION BY REFERENCE

For the purposes of this subchapter, the board hereby adopts and incorporates by reference 40 CFR Part 51, Section IV of Appendix Y, Guidelines for BART Determinations Under the Regional Haze Rule.

NEW RULE III BART REQUIREMENTS

(1) The owner or operator of an existing stationary facility is not subject to the requirements of NEW RULE III for sulfur dioxide (SO₂) or oxides of nitrogen (NO_x) if the BART-eligible source# has the potential to emit less than 40 tons per year of such pollutant(s), or for PM-10 if the BART-eligible source# emits less than 15 tons per year of PM-10 based on a continuous 12 month period of operation that accurately reflects steady-state operation, excluding periods of start-up, shutdown, and malfunction from [date] to [date]. [40 CFR 308(e)(1)(ii)(C)]

(2) The owner or operator of a BART-eligible source which has the potential to emit NO_x, SO₂, or which emits PM-10 in amounts that equal or exceed those set forth in (1) shall submit to the department information, within 30 days following the effective date of this rule, necessary to conduct air quality modeling pursuant to 40 CFR Part 51, Appendix Y, relevant to the impact of the BART-eligible source’s emissions on visibility in any mandatory class I federal area. If the information submitted is incomplete or otherwise inadequate, the department shall notify the owner or operator, list the reasons why the information is incomplete or inadequate, and state the additional information required. The owner or operator shall submit to the department the required information 30 days after receiving such notice. [40 CFR 308(e) & Guidelines at Sec. II.A.]

(3) An owner or operator of a BART-eligible source ~~or an agent with authority to represent the owner or operator of a BART-eligible source~~ shall certify in writing that, based on information and belief formed after reasonable inquiry, the statements and information submitted pursuant to New Rule III(2) are true, accurate, and complete.

(4) A BART-eligible source which is not otherwise exempt pursuant to NEW RULE III(1) and which the department finds causes or contributes to an increase in visibility impairment in an affected mandatory class I federal area measuring 0.5 deciview or more when compared against ~~the~~ natural conditions background level of visibility is subject to the requirements of NEW RULE III. The department shall notify each owner or operator of a BART-eligible source that it finds causes or contributes to visibility impairment of this finding. 70 FR 39117-39118 & Guidelines Sec. III.A.]

(5) Within 90120 days following the the postmarked date of the department's notification pursuant to NEW RULE III(4), the owner or operator of the BART-eligible source shall submit to the department a proposal for BART made pursuant to Section IV of 40 CFR Part 51, Appendix Y for those pollutants that cause or contribute to visibility impairment as set forth in NEW RULE III(4). [40 CFR 308(e)(1)(ii)& Guidelines Sec. IV.]

(6) Within 120 days following receipt of a proposal for BART, ~~The department shall issue a preliminary notice of BART determination, notify the owner or operator of the BART-eligible source and interested parties, and~~

(7) After issuing the preliminary notice of BART, the department shall notify the owner or operator of the BART-eligible source and interested parties, publish public notice in a newspaper of general circulation in the area(s) affected by the source for which the preliminary notice of BART is issued, and provide at least 30 days of public comment on the preliminary notice of BART determination.

~~(78)~~ The department may, on its own action, or at the request of the owner or operator of a BART-eligible source or an interested party, extend by 15 days the period within which public comments may be submitted if the department finds that an extension is necessary to allow the department to make an informed decision.

(9) Any request for an extension, as provided under NEW RULE III(5), by the owner or operator of a BART-eligible source or an interested party must be submitted to the department by the date that written comments on the preliminary notice of BART determination originally were due.

(810) Within 10 days fFollowing the close of the public comment period, the department shall issue a final notice of BART determination and notify the owner or operator of the BART-eligible source and interested parties of such notice. ~~The owner or operator of a BART-eligible source shall install and begin operating control equipment as set forth in the department's notice of BART determination as expeditiously as practicable, but no later than five years after the department's issuance of such notice.~~ [42 USC 7491(b)(2)(A)]

(811) A person who is jointly or severally adversely affected by the department's notice of BART determination may request a hearing before the

~~board~~department. The request for hearing must be filed within 15 days following the department's final issuance of the notice of BART determination and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing held under this rule. [MAPA]

(~~14~~12) The department's action is not final unless 15 days have elapsed from the date of the department's issuance of the final notice of BART determination ~~and no person requests a hearing before the board~~. The filing of a request for a hearing ~~postpones~~does not stay the effective date of the department's notice of final BART determination ~~until the conclusion of the hearing and the issuance of a final decision by the board~~. The Department may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing that:

(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(b) continuation of the final notice of BART determination during the appeal would produce great or irreparable injury to the person requesting the stay.

(13) Upon granting a stay, the Department may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the owner or operator of a BART-eligible source subject to NEW RULE III and its employees if the Department determines that the final notice of BART determination was properly issued. When requiring an undertaking, the Department shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions. [Due process / administrative remedies – See 75-2-211(11), MCA].

(1~~4~~3) The owner or operator of a BART-eligible source shall install and begin operating control equipment as set forth in the department's notice of BART determination as expeditiously as practicable, but ~~no later than five years after the department's issuance of such notice~~in no event later than five years after the date of EPA approval of the BART determination as a revision to the Montana State Implementation Plan. [42 USC 7491(b)(2)(A)]

AUTH: 75-2-111, 75-2-203, MCA.

IMP: 75-2-203, MCA.

[